

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CARLOS GONZALEZ,  
*Plaintiff,*

v.

MIKE DALY, *et al.*,  
*Defendants.*

CIVIL ACTION  
NO. 20-4531

**ORDER**

AND NOW, this 29th day of December, 2021, upon consideration of Defendants Daly, Wambold, Shrek, Muniz and Keiser's Motion to Dismiss (ECF 45), Plaintiff Carlos Gonzalez's Response (ECF 46), Plaintiff's Motion to Strike (ECF 47) and his Motions seeking leave to file a Third Amended Complaint (ECF 44, 49 and 50), and consistent with the accompanying Memorandum of Law, it is **ORDERED** that:

1. Defendants' motion is **GRANTED** in part and **DENIED** in part. The motion is denied with respect to Gonzalez's excessive force claims against Daly, Wambold and Shrek. It is granted in all other respects. Gonzalez's claims that Shrek denied him access to medical care and that Wambold, Muniz and/or Keiser failed to protect him from contracting COVID-19 are **DISMISSED**;

2. If he is able to allege sufficient facts to do so, Gonzalez may amend his claims that: (1) Shrek was deliberately indifferent to a serious medical need when he denied Gonzalez access to medical care during the October 2020 incident; and (2) Wambold, Muniz and/or Keiser acted with deliberate indifference in failing to protect him from contracting COVID-19;

3. Gonzalez shall file his Third Amended Complaint, if any, on or before

**Friday, January 28, 2022.** If the Court does not receive a Third Amended Complaint from Gonzalez on or before then, this action will proceed on the excessive force claims that remain;

4. Any Third Amended Complaint may not allege new claims or claims against any new defendant. It must be complete, alleging all claims that Gonzalez wishes to pursue including those that the Court has not dismissed (i.e., his excessive force claims – against Daly for the July 2020 incident and against Wambold and Shrek for the October 2020 incident;

5. Gonzalez’s motions for leave to amend (ECF 44, 49 and 50) are otherwise **DENIED**.

6. Gonzalez’s motion to strike Defendants’ motion (ECF 47) is **DENIED**.

BY THE COURT:

/s/ Gerald J. Pappert  
GERALD J. PAPPERT, J.